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No. 10 ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, [redacted] 1958

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

Answer of the State of Louisiana to the Amended Complaint

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v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

Answer of the State of Louisiana to the Amended Complaint

Now comes the State of Louisiana, defendant herein, through its Attorney General, and reserving all rights and defenses heretofore asserted in these proceedings and without in any manner waiving or abandoning the same, files its answer to the amended complaint filed by the United States of America, through its Solicitor General, pursuant to order of this court of June 24, 1957, as amended by the order of October 22, 1957.

I.

No answer is required to Article I.

II.

Answering Article II of the amended complaint, the State of Louisiana avers that, prior to the decision of this Honorable Court in *United States v. California*,[1] there was no official recognition of any claim of the United States as against the states which com-

[1] 332 U. S. 19, 67 S. Ct. 1658, 91 L. Ed. 1889; followed in *U. S. v. Texas*, 339 U. S. 707, 94 L. Ed. 1221, and *U. S. v. Louisiana* 339 U. S. 699, 94 L. Ed. 1216.

pose it to submerged lands lying off the coast and the decision in the California Case stated that "the Federal Government rather than the state has paramount rights in and power over that belt (the three mile belt), an incident to which is full dominion over the resources of the soil under that water area, including oil."

The Submerged Lands Act[2] and the Outer Continental Shelf Lands Act[3] were passed by Congress and signed by the President in 1953, the first to confirm and establish the titles of the states and of the United States within the limits prescribed by the statute, and the second to provide for the jurisdiction of the United States over the submerged lands of the outer continental shelf. Accordingly, the State of Louisiana denies that the United States is entitled to possession and dominion and power over the lands and minerals underlying the Gulf of Mexico and extending seaward three marine leagues from the coast as defined in the Submerged Lands Act.

III.

Answering Article III of the amended complaint, the State of Louisiana says that, although a decree was entered by this Court on December 11, 1950, in the case of *United States v. Louisiana*, 340 U. S. 899, which decree speaks for itself, defendant shows that since this decree was rendered, Congress enacted and the President signed the Submerged Lands Act, su-

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[2]67 Stat. 29, 43 U.S.C. 1301.
[3]67 Stat. 462, 43 U.S.C. 1332.

pra, effective as of May 22, 1953, and by its provisions and the provisions of the Outer Continental Shelf Lands Act, the United States quitclaimed, confirmed and established the titles of the states to certain lands beneath navigable waters within state boundaries and to the natural resources within such lands and waters. Said Acts also provide for the use and control of said lands and resources and declare therein the rights of the states by which title to and ownership of the lands beneath navigable waters within the boundaries of the respective states and the natural resources within such lands and waters, and the right and power to manage, administer, lease, develop and use the said lands and natural resources were recognized, confirmed, established, and vested in the states. In said Acts the United States released and relinquished unto the states all right, title and interest, if any it had, in and to all said lands, improvements and natural resources and all claims of the United States, if any it had, for money or damages arising out of any operations of said states or persons pursuant to the state authority upon or within said lands and navigable waters.

IV.

In answer to Article IV of the amended complaint, Louisiana admits that by the Submerged Lands Act described therein, the United States released and relinquished to the State of Louisiana all claims of the United States, if any it had, for money or damages arising out of any operations by the State of Louisiana within this area defined in said Act, and es-

tablished title to all submerged lands and natural resources in the State of Louisiana and released and relinquished unto Louisiana all right, title and interest of the United States, if any it had, thereto, within Louisiana's historic boundaries extending three marine leagues into the Gulf of Mexico from the coast.

V.

The allegations of Article V of the amended complaint are denied.

Further answering, Louisiana avers that its southern boundary was established by Congress in the Enabling Act[4] which admitted Louisiana into the Union and by the Constitution of the State of Louisiana at that time, as three marine leagues from its coast into the Gulf of Mexico; that prior to the decision of this Honorable Court in *United States v. California, supra*, and the passage of the enactment of the Submerged Lands Act and the Outer Continental Shelf Lands Act, Louisiana's southern boundary was deemed to be co-extensive with the southern boundary of the United States, but, if said decision and said statutes have the effect of limiting the present southern boundary of the State of Louisiana, then pursuant thereto the boundary of the State of Louisiana must extend three marine leagues into the Gulf of Mexico from its coast.

In the alternative, the State of Louisiana shows that if the Court shall find that Louisiana's present territorial boundary does not extend three marine

[4]Act of Congress, April 8, 1812, 2 Stat. 701.

leagues into the Gulf of Mexico from its coast, nevertheless three (3) leagues from coast is the measure within which Louisiana is entitled to take the natural resources, including oil, whether the same is within the territory of the United States or only appertains to the United States.

VI.

Article VI of the amended complaint is denied.

VII.

Answering Article VII of the amended complaint, Louisiana admits that it is claiming rights adverse to the United States in the submerged lands, minerals and other things underlying the Gulf of Mexico to the extent of at least three marine leagues from the coast of Louisiana; that, prior to the injunction issued by this Honorable Court of June 11, 1956, the State of Louisiana invited bids for leases of submerged lands within the area mentioned in said article, and warned lessees of the United States that it would take all action necessary to protect the state's interest within said area.

VIII.

Article VIII of the amended complaint is denied, except as may hereinafter be specifically admitted. The State of Louisiana admits that there is a need to establish the rights of the respective parties and Louisiana avers that such rights cannot be properly established until the claim of the State of Louisiana to all submerged lands and natural resources within

not less than three marine leagues from its coast is recognized.

Further answering Article VIII, the State of Louisiana avers that in this proceeding this Honorable Court issued on June 11, 1956, an order which maintained the status quo in this matter and which order provided among other things the following:

> "It is further ordered that the State of Louisiana and the United States of America are enjoined from leasing or beginning the drilling of new wells in the disputed tidelands area pending further order of this court unless by agreement of the parties filed here."

Pursuant to said order the United States of America and the State of Louisiana entered into an interim agreement on October 12, 1956, which agreement was filed in this Honorable Court and that the rights of both parties are fully protected during this controversy by the terms of said interim agreement.

IX.

In answer to article IX of the amended complaint, the State of Louisiana says that the President of the United States and the Congress of the United States have asserted the extent of American territory in the Gulf of Mexico and the rights appertaining thereto and have set forth the extent to which the United States and the coastal states shall participate in the natural resources appertaining to such territory and to such "extra-territorial" rights. Accordingly the present controversy does not involve anything with which any foreign power can be concerned but is wholly an internal matter.

The Submerged Lands Act, supra, which released and relinquished unto the States bordering on the Gulf of Mexico, all right, title and interest of the United States, if any it had, in and to the oil and other resources beneath the waters of the Gulf of Mexico extending three marine leagues from the coast, does not involve any international question to be passed upon by this Honorable Court; however, to the extent that any international question could be raised thereby, the action of Congress, concurred in by the President, is final and the question as to the area within the control of the United States as a nation in which jurisdiction may be exercised by a state of the Union pursuant to congressional enactment, is purely a domestic matter.

X.

Further answering, defendant denies that any foreign policy has been adopted by the United States through or under the authority of the Constitution or the Congress of the United States which in any manner affects the historic boundary of the State of Louisiana as fixed by the Act of Congress which admitted the state into the Union; nor can any inquiry into said application of foreign policy of the United States as alleged, affect or diminish in any manner the quitclaim by the United States contained in said Submerged Lands Act to the State of Louisiana of the exclusive title to and ownership of the lands beneath navigable waters within three leagues from its coast line into the Gulf of Mexico and the natural resources within such lands and waters.

Further answering, defendant shows that even if complainant succeeds in the attempt to restrict the state's historic seaward boundaries to a three mile belt based upon irrelevant claims concerning "foreign policy", this would not defeat Louisiana's claim to the natural resources within three leagues of its coast, but would needlessly strip the gulf coastal states and the United States of a considerable portion of their gulfward territory based upon historic title which is not in conflict with International law.

XI.

Further answering the amended complaint, the State of Louisiana avers:

A. That by the terms of the Submerged Lands Act, supra, the State of Louisiana is entitled to the submerged lands as territory but if not as territory, then it has the right to take the oil and other natural resources in the submerged lands, to its boundary line gulfward to the distance measured by its boundary as it existed at the time the State of Louisiana became a member of the Union or prior thereto, or as approved by Congress prior to May 22, 1953. The said Submerged Lands Act, supra, established a boundary line three geographical miles distant from the coast of the states bordering the Atlantic and Pacific Oceans and established the international boundary line as the boundary of the states bordering the Great Lakes. With respect to the states bordering the Gulf of Mexico, which traditionally had claimed more, Section

4 of the Submerged Lands Act provides specifically that nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any state's seaward boundary beyond three geographical miles if it were so provided by its constitution or laws prior to or at the time such state became a member of the Union, or if it has been theretofore approved by Congress. The only limit set by said Submerged Lands Act to the rights of the states on the Gulf of Mexico, is in Section 2(b), which limit is not "more than three marine leagues into the Gulf of Mexico from the coast."

B. Further answering the amended complaint, the State of Louisiana shows that France and Spain, who owned the Louisiana territory before its purchase by the United States in 1803, legally claimed far more than three marine leagues from coast into the Gulf of Mexico, as fully outlined in the brief filed herein by the State of Louisiana on March 28, 1957, in opposition to motion for judgment by the United States.

C. The Act of purchase of Louisiana from France gave emphasis to the acquisition of the marine area in a special article which reads:

ARTICLE II

"In the cession made by the preceding article are included the *adjacent* islands belonging to Louisiana , . . ."[5] (*Italics* added).

[5] Treaty for the Cession of Louisiana from France to the United States, signed at Paris, April 30, 1803, 8 Stat. 200.

D. The State of Louisiana shows that by Act of March 26, 1804, 2 Stat. 283, creating the territory of Orleans; by Act of February 20, 1811, 2 Stat. 641, enabling the people of the territory of Orleans to form a constitution and state government and by Act of April 8, 1812, 2 Stat. 701, providing for the admission of the State of Louisiana into the Union, Congress established the territory of the State of Louisiana as all that area contained within the following limits, that is to say: **"beginning at the mouth of the River Sabine; thence by a line to be drawn along the middle of said river,** including all islands to the 32nd degree of latitude; thence due north to the northern most part of the 33rd degree of north latitude; thence along the said parallel of latitude to the River Mississippi; thence down the said river to the River Iberville; and from thence along the middle of the said river and Lakes Maurepas and Pontchartrain to the Gulf of Mexico; **thence bounded by the said gulf to the place of beginning, including all islands within three leagues of the coast."** (emphasis supplied).

E. The Constitution of Louisiana, adopted January 22, 1812, conforms to the said Enabling Act of Congress.

F. At a time when the United States considered that the territorial limits of the United States were co-extensive with the territorial limits of the states, the United States established with Spain, Mexico and Texas a boundary for the State of Texas in the Gulf of Mexico three marine leagues from land at

the mouth of the Sabine River. An Act of the Congress of the Republic of Texas defined the boundary of the Republic of Texas thus: "Beginning at the mouth of the Sabine River, and running west along the Gulf of Mexico three marine leagues from land to the mouth of the Rio Grande",[6] and this boundary was specifically recognized by the United States in its Treaty with the Republic of Texas signed at Washington on April 25, 1838.[7] The establishment of the southeast corner of the State of Texas three leagues seaward in the Gulf of Mexico as a part of the boundary between the United States and the Republic of Texas necessarily recognized that the southwest corner of the boundary of the State of Louisiana extended at least three marine leagues into the Gulf of Mexico.

G. This court in *United States v. State of Texas*,[8] and in *Louisiana v. Mississippi*,[9] *has twice recognized* that the boundary of the State of Louisiana, as fixed by the Act of 1812, includes a water area, declaring in the latter case the "ownership of the State of Louisiana in the land and water territory" described therein, and the United States is bound by said decisions.

H. The Act of Congress, admitting Louisiana into the Union,[10] like the Acts of Admission of other Gulf Coast States provided that the State of Louisiana be admitted on an "equal footing. . .in all respects" with

[6] 1 Gammel's Laws of Texas, pages 1193-1194.
[7] 8 Stat. 511, 4 Miller's Treaties 133.
[8] 162 U. S. 1, 16 Sup. Ct. 725, 40 L. Ed. 867.
[9] 202 U. S. 1, 26 S. Ct. 408, So. L. Ed. 913.
[10] 2 Stat. 701.

other States of the Union and this court has ruled that all states must be maintained on an equality which is "equal in power, dignity and authority,"[11] and that the equal footing clause, among other things, refers to sovereignty over power and "has a direct effect on certain property rights."[12] Louisiana is accordingly entitled to an equal footing with respect to sovereignty over and property rights in the Gulf of Mexico with other states bordering the same whose boundaries have been recognized by Congress as extending three leagues seaward.[13]

I. The State of Louisiana avers that its historic boundary extends into the Gulf of Mexico more than three marine leagues from its coast line as hereinabove shown, and that the Congress of the United States has recognized that boundary to the extent of at least three marine leagues from the coast line of the State of Louisiana.

XII

The State of Louisiana reiterates and makes a part hereof all of the defenses contained in its answer to the original complaint.

WHEREFORE, the State of Louisiana reserves all of its rights and defenses previously asserted and particularly under the motion to take depositions previously filed, and prays that a decree be entered here-

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[11] *Coyle v. Smith* 221 U. S. 566-7, 55 L. Ed. 853, 858; House Report No. 215, Submerged Lands Act p. 43; Senate Report No. 133, Submerged Lands Act p. 64 and 65.
[12] *U. S. v. Texas*, 339 U. S. 707, 94 L. Ed. 1221.
[13] Appendix to Louisiana's brief p. 23, p. 75 to 86, inclusive; House Report No. 133, Submerged Lands Act p. 64 and 65.

in decreeing that Louisiana is entitled to the lands and natural resources under its submerged lands as originally prayed for; in the alternative, that it is entitled to said lands extending into the Gulf of Mexico at least three marine leagues beyond its coast line; and in the further alternative, that if Louisiana's territorial boundary does not extend three marine leagues into the Gulf of Mexico from its coast, then that distance is nevertheless the measure provided by the Submerged Lands Act within which Louisiana has a right to take the natural resources and other things. Louisiana further prays for all orders and decrees necessary and proper in the premises and for full general and equitable relief.

Respectfully submitted,

JACK P. F. GREMILLION
Attorney General
State of Louisiana

PROOF OF SERVICE

I, the undersigned, of Counsel for the State of Louisiana, defendant herein, and a member of the Bar of the Supreme Court of the United States, certify that on the _____ day of_____, 19——, I served copies of the foregoing answer of the State of Louisiana to the Amended Complaint by leaving copies thereof at the offices of the Attorney General and of the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C., and by mailing, postage prepaid, copies of said answer to the States of Texas, Mississippi, Alabama and Florida.

_____

Of Counsel

MOTION FILED DEC 30 1957

No. 10 ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, ~~1957~~ 1958

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

Motion for Pretrial Conference and Statement in Support of Motion

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STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

Motion for Pretrial Conference and Statement in Support of Motion

Now come the States of Florida, Alabama, Mississippi, Louisiana and Texas, made defendants in this Original Action, appearing through their respective Attorneys General, and move that this Honorable Court order and hold a pre-trial conference herein.

STATEMENT IN SUPPORT OF MOTION

PART III, Rule 9 (2), of the Rules of this Honorable Court provides that "The form of pleadings and motions in original actions shall be governed, so far as may be, by the Federal Rules of Civil Procedure, and in other respects those rules, where their application is appropriate, may be taken as a guide to procedure in original actions in this court."

Rule 16 of the Federal Rules of Civil Procedure provides in part that, "In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider

"(1) The simplification of the issues;
(2) The necessity or desirability of amendments to the pleadings;
(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
(4) The limitation of the number of expert witnessess;
(5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;
(6) Such other matters as may aid in the disposition of the action."

It is, therefore, respectfully submitted:

(A) That not only does this Honorable Court have inherent powers to grant and order a pre-trial conference in cases wherein it assumes original jurisdiction under Article III, Section 2, Clause 2 of the Constitution of the United States, as in the instant case where the five States who are movants herein are parties defendant, but the authorities above cited constitute sufficient specific authority for the court to order a pre-trial conference in conformity with this motion;

(B) That this case, brought by the United States of America, plaintiff, originally docketed as Cause No. 7 Original, at the October term, 1954, of this Honor-

able Court, named the State of Louisiana as the sole party defendant. That subsequently, the State of Texas filed an amicus curiae brief, and on June 24, 1957, this Honorable Court entered an order granting leave to each of the States of Alabama, Florida, Mississippi and Texas to intervene in said suit originally filed against the State of Louisiana, and upon failure of said States, or any of them, to intervene within 60 days, the order granted leave to the United States, within 60 days thereafter, to file an amended or supplemental complaint adding as parties to said suit any of such States as shall not have so intervened. Whereupon, the United States of America amended its original complaint in said cause and named the States of Alabama, Florida, Mississippi, Texas and Louisiana as parties defendant. By order of this Honorable Court entered on November 18, 1957, movants herein were directed to answer said amended complaint within 45 days from that date;

(C) That prior to the adding and joining of the States of Texas, Mississippi, Alabama and Florida as parties defendant by the filing of said amended complaint by the United States, and while Louisiana was the sole and only defendant, said cause was argued by the then only parties thereto and was submitted for judicial determination. However, since the amended complaint also includes the State of Louisiana, it would now appear that said amended complaint forms the basis for and has the effect of a proceeding de novo insofar as the State of Louisiana is concerned as

well as the said other four States named as parties defendant;

(D) That due to the nature of this suit and the developments herein as aforesaid, procedural questions important to the proper consideration and determination of the issues in this cause have arisen which can best be resolved at a pre-trial conference attended by the attorneys for all interested parties. Among the matters which should be considered at such a conference and which, if resolved, would result in a simplification of the issues and generally aid in the disposition of this action, are the following:

(1) The length of oral argument and the amount of time allotted to each particular State for its argument should be determined in the event the plaintiff should file a motion for judgment on the amended complaint and the answers thereto;

(2) The order of argument among the respective States named as parties defendant;

(3) The question of whether said amended complaint has the effect of a proceeding de novo against the State of Louisiana;

(4) If at a conference the question of taking evidence and the referral of the action to an inferior tribunal or a Special Master for that purpose could be explored, argument might then be concentrated more on the principal issue;

(5) After hearing from counsel for all of the parties at the conference, the court might then deem it appropriate to fix the time within which briefs shall be filed.

(E) That due to the unusual and complex character of this suit, it is necessary that the attorneys for the parties hereto, either individually or collectively, inquire of this Honorable Court as to procedural steps to be taken in this action; that should said attorneys individually approach the Court for procedural instruction then a lack of mutuality of understanding is likely to result and, in addition, the following of such a course would amount to an unnecessary and burdensome intrusion upon the valuable time of this Honorable Court, but that a pre-trial conference, in which the attorneys for all of the parties hereto are invited to participate, held as soon as convenient to the Court, would result not only in a saving of valuable time but would result in a clearer and more certain understanding of the issues involved and would settle the procedural questions posed; and that, therefore, the ends of justice and the interests of all parties concerned can best be served by the granting of a pre-trial conference for the purpose of considering these matters.

Respectfully submitted,

JACK P. F. GREMILLION
Attorney General
State of Louisiana

RICHARD W. ERVIN
Attorney General
State of Florida

JOHN M. PATTERSON
Attorney General
State of Alabama

JOE T. PATTERSON
Attorney General
State of Mississippi

WILL WILSON
Attorney General
State of Texas

PROOF OF SERVICE

The undersigned, of counsel of record for defendants, acting for and on behalf of the States of Louisiana, Texas, Mississippi, Alabama and Florida, and their respective Attorneys General, and a Member of the Bar of the Supreme Court of the United States, certify that I served copies of the foregoing motion by the defendant States herein for pre-trial conference and statement in support of motion, by leaving copies thereof at the Offices of the Attorney General and of the Solicitor General, respectively, of the United States, in the Department of Justice Building, Washington, D. C., on the_____ day of_____, 19____.

_____

Of Counsel